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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/535,458

06/15/2006

Karen McLachlan

037003-0316138

1633

53644

7590

09/15/2008

STERNE, KESSLER, GOLDSTEIN & FOX, P.L.L.C.
1100 NEW YORK AVE., N.W.
WASHINGTON, DC 20005

EXAMINER

HARRIS, ALANA M

ART UNIT

PAPER NUMBER

1643

MAIL DATE

DELIVERY MODE

09/15/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/535,458	Applicant(s) MCLACHLAN ET AL.	
	Examiner Alana M. Harris, Ph.D.	Art Unit 1643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 and 28 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-24 and 28 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Groups I and II, claim(s) 1 and 2, drawn to an isolated nucleic acid comprising a nucleotide sequence, a nucleotide sequence that is at least 90% identical to said sequence, a fragment of said nucleotide sequence, a fragment of said nucleotide, wherein the nucleotide sequence is SEQ ID NO: 67 or SEQ ID NO: 69, respectively.

Groups III and IV, claim(s) 3, drawn to a primer mixture comprising primers that result in the amplification of SEQ ID NO: 67 or SEQ ID NO: 69, respectively.

Groups V and VI, claim(s) 4-6, drawn to an antigen encoded by SEQ ID NO: 67 or SEQ ID NO: 69, respectively.

Groups VII and VIII, claim(s) 7-15, drawn to a monoclonal antibody that binds to a cancer antigen identified as SEQ ID NO: 68 or SEQ ID NO: 70, respectively.

Groups IX and X, claim(s) 16-18, drawn to a diagnostic kit comprising an isolated nucleic acid, SEQ ID NO: 67 or SEQ ID NO: 69, respectively.

Groups XI and XII, claim(s) 19-24, drawn to a method of detecting cancer comprising determining cancer gene expression of SEQ ID NO: 67 or SEQ ID NO: 69, respectively.

Groups XIII and XIV, claim(s) 28, drawn to a method for treating cancer comprising administering a cancer antigen encoded by nucleic acid, SEQ ID NO: 67 or SEQ ID NO: 69, respectively.

The inventions listed as Groups I-XIV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the special technical feature is an isolated nucleic acid, SEQ ID NO: 67, fragments thereof and variant molecules at least 90% identical to said sequence. U.S. Patent number 6,979,577 (filed March 12, 2002) discloses a fragment of nucleotide sequence, SEQ ID NO: 67 that is at

Art Unit: 1643

least 20 nucleotides in length, see sequence alignment below. Therefore, the technical feature recited in claim 1 is not special. Accordingly, the groups are not so linked as to form a single general concept under PCT Rule 13.1.

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RESULT 1
US-10-094-749-2
; Sequence 2, Application US/10094749
; Patent No. 6979557
; GENERAL INFORMATION:
; APPLICANT: ISOGAI, TAKAO
; APPLICANT: SUGIYAMA, TOMOYASU
; APPLICANT: OTSUKI, TETSUJI
; APPLICANT: WAKAMATSU, AI
; APPLICANT: SATO, HIROYUKI
; APPLICANT: ISHII, SHIZUKO
; APPLICANT: YAMAMOTO, JUN-ICHI
; APPLICANT: ISONO, YUUKO
; APPLICANT: HIO, YURI
; APPLICANT: OTSUKA, KAORU
; APPLICANT: NAGAI, KEIICHI
; APPLICANT: IRIE, RYOTARO
; APPLICANT: TAMECHIKA, ICHIRO
; APPLICANT: SEKI, NAOHIKO
; APPLICANT: YOSHIKAWA, TSUTOMU
; APPLICANT: OTSUKA, MOTOYUKI
; APPLICANT: NAGAHARI, KENJI
; APPLICANT: MASUHO, YASUHIKO
; TITLE OF INVENTION: NOVEL FULL-LENGTH cDNA
; FILE REFERENCE: 084335/0160
; CURRENT APPLICATION NUMBER: US/10/094,749
; CURRENT FILING DATE: 2002-03-12
; PRIOR APPLICATION NUMBER: 60/350,435
; PRIOR FILING DATE: 2002-01-24
; PRIOR APPLICATION NUMBER: JP 2001-328381
; PRIOR FILING DATE: 2001-09-14
; NUMBER OF SEQ ID NOS: 3381
; SOFTWARE: PatentIn Ver. 2.1
; SEQ ID NO 2
; LENGTH: 2370
; TYPE: DNA
; ORGANISM: Homo sapiens
US-10-094-749-2

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Query Match          82.2%;  Score 2238.2;  DB 4;  Length 2370;
Best Local Similarity 95.2%;  Pred. No. 0;
Matches 2367;  Conservative 0;  Mismatches 3;  Indels 117;  Gaps 1;

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Qy      234 ATCGAGCGCAGGGCGATGGGTGGGCGCCGGGCGCCGGGCGCCAGGCAGTGATGGGCCTTC 293
          ||||||||||||||||||||||||||||||||||||||||||||||||||||||||
Db      1   ATCGAGCGCAGGGCGATGGGTGGGCGCCGGGCGCCGGGCGCCAGGCAGTGATGGGCCTTC 60

Qy      294 CCGCGCTGCGGCCCCACTGAGGAGGAGGCTCGGGGACAGCAGGAGCACGGGCTGCCCCGCG 353
          ||||||||||||||||||||||||||||||||||||||||||||||||||||||||
Db      61 CCGCGCTGCGGCCCCACTGAGGAGGAGGCTCGGGGACAGCAGGAGCACGGGCTGCCCCGCG 120

Qy      354 CGGTGCGGACCATGGCGTTCCTGGCCGGGCGCGCCTGCTGGACTGGGCCAGCTCGCCGC 413
          ||||||||||||||||||||||||||||||||||||||||||||||||||||||||
Db      121 CGGTGCGGACCATGGCGTTCCTGGCCGGGCGCGCCTGCTGGACTGGGCCAGCTCGCCGC 180

Qy      414 CGCACCTGCAGTTCAATAAGTTCGTGCTGACCGGGTACCGGCCCCGCCAGCAGCGGCTCGG 473
          ||||||||||||||||||||||||||||||||||||||||||||||||||||||||
Db      181 CGCACCTGCAGTTCAATAAGTTCGTGCTGACCGGGTACCGGCCCCGCCAGCAGCGGCTCGG 240

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Qy	474	GCTGCCTGCGCAGCCTCTTCTACCTGCACAACGAACATGGGCAACATCTACACGCACGGGC	533
Db	241	GCTGCCTGCGCAGCCTCTTCTACCTGCACAACGAACATGGGCAACATCTACACGCAC----	296
Qy	534	TGGCCCTGCTGGGCTTCTTGGTGTGGTGCCAAATGACCATGCCCTGGGGTCAGCTGGGCA	593
Db	297	-----	296
Qy	594	AGGATGGCTGGCTGGGAGGCACACATTGCGTGGCCTGCCTTGCAACCCCTGCAGGCTCCG	653
Db	297	-----GGCTCCG	303
Qy	654	TGCTCTATCACCTCTTTATGTGCCACCAAGGGGGCAGCGCTGTGTACGCCCGGCTCCTCG	713
Db	304	TGCTCTATCACCTCTTTATGTGCCACCAAGGGGGCAGCGCTGTGTACGCCCGGCTCCTCG	363
Qy	714	CCCTGGACATGTGTGGGGTCTGCCTTGTC AACACCCTTGGGGCCCTGCCATCATCCACT	773
Db	364	CCCTGGACATGTGTGGGGTCTGCCTTGTC AACACCCTTGGGGCCCTGCCATCATCCACT	423
Qy	774	GCACCCTGGCCTGCGAGGCCCTGGCTGCGCCCGGCTGCCCTGGTGGGCTACACTGTGTTGT	833
Db	424	GCACCCTGGCCTGCGAGGCCCTGGCTGCGCCCGGCTGCCCTGGTGGGCTACACTGTGTTGT	483
Qy	834	CGGGTGTGGCCGGCTGGCGTGTCTCACC GCCCCTCCACCAGTGCTCGGCTCCGGGCAT	893
Db	484	CGGGTGTGGCCGGCTGGCGTGTCTCACC GCCCCTCCACCAGTGCTCGGCTCCGGGCAT	543
Qy	894	TTGGATGGCAGGCTGCTGCCCGCTACTGGTATTTGGGGCCCGGGAGTGGGTCTGGGTT	953
Db	544	TTGGATGGCAGGCTGCTGCCCGCTACTGGTATTTGAGGCCCGGGAGTGGGTCTGGGTT	603
Qy	954	CAGGGGCTCCAGGCTCCCTGCCCTGCTACCTGCGCATGGACGCACTGGCGCTGCTTGGGG	1013
Db	604	CAGGGGCTCCAGGCTCCCTGCCCTGCTACCTGCGCATGGACGCACTGGCGCTGCTTGGGG	663
Qy	1014	GACTGGTAAATGTAGCCCGTCTGCCCGAGCGCTGGGGACCTGGCCGCTTTGACTACTGGG	1073
Db	664	GACTGGTAAATGTAGCCCGTCTGCCCGAGCGCTGGGGACCTGGCCGCTTTGACTACTGGG	723
Qy	1074	GCAACTCCCACCAGATCATGCACCTGCTGAGCGTGGGCTCCATCCTGCAGCTGCACGCCG	1133
Db	724	GCAACTCCCACCAGATCATGCACCTGCTGAGCGTGGGCTCCATCCTGCAGCTGCACGCCG	783
Qy	1134	GCGTCGTGCCCGACCTGCTCTGGGCTGCCACACGCCTGTCCCCGGGACTGAGCTGCCA	1193
Db	784	GCGTCGTGCCCGACCTGCTCTGGGCTGCCACACGCCTGTCCCCGGGACTGAGCTGCCA	843
Qy	1194	TGCCAGCCTGCCACAGCAGCCTCCTAGAGTTAGCAACACCAGGTGTTCTCCCAACTCG	1253
Db	844	TGCCAGCCTGCCACAGCAGCCTCCTAGAGTTAGCAACACCAGGTGTTCTCCCAACTCG	903
Qy	1254	TCTGCAAGGGGCTGGCTCCTTGATGCTTCAGCTCATGAGATGTCTCAGCAGGAGCCCT	1313
Db	904	TCTGCAAGGGGCTGGCTCCTTGATGCTTCAGCTCATGAGATGTCTCAGCAGGAGCCCT	963
Qy	1314	GTTCAACCGTTCTTCCCTGTGGACTGACCTCTTCCACCCACGCCGTGGCGCTCCAATTC	1373
Db	964	GTTCAACCGTTCTTCCCTGTGGACTGACCTCTTCCACCCACGCCGTGGCGCTCCAATTC	1023
Qy	1374	CTTCCCTGCCTTTTCCCTCCAAGCTCCTATTTTACTGTGTGAGCTGGAAGGAAACCTTTC	1433
Db	1024	CTTCCCTGCCTTTTCCCTCCAAGCTCCTATTTTACTGTGTGAGCTGGAAGGAAACCTTTC	1083
Qy	1434	CCTCTTGGGACCTCTTTACCTCTGTGACCTGTGGGGTTAGACCAGAGAGGGACTCTGGG	1493

Art Unit: 1643

Db 1084 CCTCTTGGGACCTCTTTACCCCTCTGTGACCTGTGGGGTTAGACCAGAGAGGGACTCTGGG 1143

Qy 1494 GTCACGTCTTGCTCTGAGAGTTCAAGTCCTGCCAGGCCGCCAGCCCAGAGCCTCCTCACC 1553
|||||

Db 1144 GTCATGTCTTGCTCTGAGAGTTCAAGTCCTGCCGGGCCGCCAGCCCAGAGCCTCCTCACC 1203

Qy 1554 CTATCCTGTTCTCCACCAGGCCTGTGGCCAGTCTTCCTGATCTCCATCTTTCTGCCCT 1613
|||||

Db 1204 CTATCCTGTTCTCCACCAGGCCTGTGGCCAGTCTTCCTGATCTCCATCTTTCTGCCCT 1263

Qy 1614 GCATACCAGCCCTCCCAGCAGCCACAAGCTTGCCCGCCCTGGCTCCCTCTGCCCAGAGAC 1673
|||||

Db 1264 GCATACCAGCCCTCCCAGCAGCCACAAGCTTGCCCGCCCTGGCTCCCTCTGCCCAGAGAC 1323

Qy 1674 TATGGAGTAAGGCATTTCAGGACAAAAGGACCAAGGGGGCGTGGACCCGTCTTGTACCAGC 1733
|||||

Db 1324 TATGGAGTAAGGCATTTCAGGACAAAAGGACCAAGGGGGCGTGGACCCGTCTTGTACCAGC 1383

Qy 1734 TGGCCACAGGCACAAGGGCTGCAGCTGCTTCTTCCAGGAAACTGACACAGGGAGCTCAGC 1793
|||||

Db 1384 TGGCCACAGGCACAAGGGCTGCAGCTGCTTCTTCCAGGAAACTGACACAGGGAGCTCAGC 1443

Qy 1794 GGCCTCAGATCCTGGGACCCCTGGGCCGTGCCTGCCCTCCACCTTGAGTGCCATACTCCC 1853
|||||

Db 1444 GGCCTCAGATCCTGGGACCCCTGGGCCGTGCCTGCCCTCCACCTTGAGTGCCATACTCCC 1503

Qy 1854 AACAGCTCCAGGTACCCACCGGGGGATGTGCCTGCTCAGGAAACCTCTTTGCTCCACACA 1913
|||||

Db 1504 AACAGCTCCAGGTACCCACCGGGGGATGTGCCTGCTCAGGAAACCTCTTTGCTCCACACA 1563

Qy 1914 GCATGGGGCTTCAGCTGCTGGCCCAAGGCCAGGAGCGCTGGGTTCTGCAGCAGGGCTCAG 1973
|||||

Db 1564 GCATGGGGCTTCAGCTGCTGGCCCAAGGCCAGGAGCGCTGGGTTCTGCAGCAGGGCTCAG 1623

Qy 1974 CCTCAGGGGCGTTAAGACCTTGGATGACATCAATAAAGGGACAGGAAGGGCCATGTTGCC 2033
|||||

Db 1624 CCTCAGGGGCGTTAAGACCTTGGATGACATCAATAAAGGGACAGGAAGGGCCATGTTGCC 1683

Qy 2034 ACATGAGCAAGCTTGGGTGCTCCCAAGGTTCAAATACTTTTTATTAGACACGGCCAGGCA 2093
|||||

Db 1684 ACATGAGCAAGCTTGGGTGCTCCCAAGGTTCAAATACTTTTTATTAGACACGGCCAGGCA 1743

Qy 2094 GAGAAGACCATGGGAGTTCCCGAGGGGCCCCAGCTTTCAAGGGCGACGGGAGAGACACAG 2153
|||||

Db 1744 GAGAAGACCATGGGAGTTCCCGAGGGGCCCCAGCTTTCAAGGGCGACGGGAGAGACACAG 1803

Qy 2154 GATAAAAGGTTAAAAGTGCAGAGGCAGAGTCTGGGGCTCAGGTTGGGTCTAGGTTGTCCT 2213
|||||

Db 1804 GATAAAAGGTTAAAAGTGCAGAGGCAGAGTCTGGGGCTCAGGTTGGGTCTAGGTTGTCCT 1863

Qy 2214 CAAACAGGCTGAGGAGGTTCCGAGGCTCAAAGGAGGGGAAGGAGCCCCGAGGAGGCTCTG 2273
|||||

Db 1864 CAAACAGGCTGAGGAGGTTCCGAGGCTCAAAGGAGGGGAAGGAGCCCCGAGGAGGCTCTG 1923

Qy 2274 AGTTGATGTCACCTAGGTCCAGGGCATCCCTGGGAGGAGAGAGTAGTGACACTCAGGATC 2333
|||||

Db 1924 AGTTGATGTCACCTAGGTCCAGGGCATCCCTGGGAGGAGAGAGTAGTGACACTCAGGATC 1983

Qy 2334 CAAAAGCTAGCCCTGCCCCACCCAGCCCTGGACCTGCTTACCTGGGTGTGCACCTGCTC 2393
|||||

Db 1984 CAAAAGCTAGCCCTGCCCCACCCAGCCCTGGACCTGCTTACCTGGGTGTGCACCTGCTC 2043

Qy 2394 CGGGGGGTGGAGGTGCTCCCCACAGTCCGGGCCAGGACAGCCTCAGGGGAGAGTGAAGGC 2453
|||||

Db 2044 CGGGGGGTGGAGGTGCTCCCCACAGTCCGGGCCAGGACAGCCTCAGGGGAGAGTGAAGGC 2103

Qy 2454 CTGCAGGAGGGCAGGCGAGACAAGGAGGGTGTCCAGGGCTAGGGAGTGCCGGATGAAACC 2513

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Db      2104  |||||
          CTGCAGGAGGGCAGGCAGACAAAGGAGGGTGTCAGGGCTAGGGAGTGCCGGATGAAAACC 2163
Qy      2514  AGCTCTGTCCCTGTGCAGGCTCCAGGCTCCCGCCTGACAAACAGGCAGGGAGCCACAGTC 2573
          |||||
Db      2164  AGCTCTGTCCCTGTGCAGGCTCCAGGCTCCCGCCTGACAAACAGGCAGGGAGCCACAGTC 2223
Qy      2574  AGGGACAATAAAAACTTGGTGCACTCTGAAAGCAGCACTTGGACAGCCTTCAAAGTCCTT 2633
          |||||
Db      2224  AGGGACAATAAAAACTTGGTGCACTCTGAAAGCAGCACTTGGACAGCCTTCAAAGTCCTT 2283
Qy      2634  CCATCTGGCTGCACTCCAAGGCCCCCTCTGTCCTTTTCAGAACACATGGACTTGGAGGCA 2693
          |||||
Db      2284  CCATCTGGCTGCACTCCAAGGCCCCCTCTGTCCTTTTCAGAACACATGGACTTGGAGGCA 2343
Qy      2694  GATTGAAATAAACTTTTAGTAAATGT 2720
          |||||
Db      2344  GATTGAAATAAACTTTTAGTAAATGT 2370

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2. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species in claim 28 are as follows:

- a. ribozyme; and
- b. antisense oligonucleotide.

Hence, with the election of any of the Groups cited as Inventions XIII or XIV

Applicants must elect a species.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include

Art Unit: 1643

all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The claims are deemed to correspond to the species listed above in the following manner:

The species are required in the claimed method of treating cancer.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: the two different molecules are patentably distinct and differ in composition, structure and modes of activity.

3. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Art Unit: 1643

5. The Examiner has required restriction between product and process claims.

Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder.

All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Art Unit: 1643

6. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Alana M. Harris, Ph.D. whose telephone number is (571)272-0831. The Examiner works a flexible schedule, however she can normally be reached between the hours of 7:30 am to 6:30 pm, with alternate Fridays off.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Larry R. Helms, Ph.D. can be reached on (571) 272-0832. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Alana M. Harris, Ph.D.
08 September 2008
/Alana M. Harris, Ph.D./
Primary Examiner, Art Unit 1643